polynucleotide, a host cell, and a method of producing a protein, with traverse. Reconsideration and withdrawal of the instant restriction requirement is requested.

Applicants respectfully submit that the Examiner has not established that there is an undue burden in searching for all claims as required by MPEP § 803. The "undue burden" requirement created by the U.S. Patent and Trademark Office is recited in MPEP § 803:

> If the search and examination of an entire application can be made without serious burden, the examiner must examine it on its merits, even though it includes claims to independent and distinct inventions.

As evidence of the lack of an undue burden, Applicants point out that the claims of Groups I, XXXIII, and XXXV are all classified within class 530. Applicants do not believe that an undue burden would be placed on the Examiner to rejoin the claims of Groups XXXIII (claims 31-40 and 53) and XXXV (claim 43) with those of Group I.

In any event, Applicants note that Groups II-XXXI and XXXVIII-LXVII are all drawn to a single claim, but correspond to different SEQ ID numbers. Applicants strongly disagree with such a grouping. In a conventional restriction requirement, regardless of the election made, the Examiner will examine a reasonable number of sequences that fall within a generic claim. However, in the

present instance the Examiner has restricted sequences within the generic claim. Specifically, Groups II-XXXI, even though directed to only one claim (claim 12), embody 29 possible sequences (SEQ ID NOS 3-32). Similarly, Groups XXXVII-LXVII are only directed to one claim (claim 50) but 29 sequences. However, the Examiner has created separate groups for each sequence, thus requiring Applicants to select a single sequence for prosecution on the merits. This is an improper restriction requirement and should be withdrawn.

The Examiner fails to provide any reason at all why each of the inventive sequences should be restricted, for example, there is no reasoning why inventions II, III, IV, V...etc. are unrelated. The Examiner has provided absolutely no evidence to explain why these sequences are distinct. Thus, the Examiner leaves Applicants with effectively no rebuttal.

Regardless of the present facts, to aid the biotechnology industry in protecting its intellectual property, the Commissioner has partially waived the requirements of 37 C.F.R. §1.141 *et seq.* to permit a "reasonable number" of nucleotide sequences to be claimed in a single application. *See Examination of Patent Applications Containing Nucleotide Sequences*, 1192 OG 68 (November 19, 1996). MPEP §803.04 explains that normally 10 sequences

constitute a "reasonable number" of sequences for examination purposes. Thus, 11 independent and distinct nucleotide sequences should be examined in a single application without restriction. Exceptional cases which are outside of this practice include amino acid sequences reciting 3-dimensional folding. However, the present case is not one of these exceptional cases. Therefore, the Examiner's restriction requirement is completely groundless and should be withdrawn. At the very least, Groups II-XXXI and XXXVIII-LXVII should be rejoined.

Applicants further point out that in the event that allowable subject matter is found for any claim directed to a nucleic or amino acid sequence, claims directed to methods of making or use of these sequences should be rejoined and be found allowable so long as these method claims include all the limitations of the allowable product claim.

For these reasons, Applicants believe that an undue burden for searching does not exist, and respectfully request that the Examiner rejoin all claims of the present invention and examine the claims together in the present application. An early and favorable action on the merits of the present application is earnestly solicited.

Sequence Listing

In response to the Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures mailed May 8, 2001, attached hereto is a disk containing the computer readable copy of the Substitute Sequence Listing. The computer readable copy of the Substitute Sequence Listing is in full compliance with 37 C.F.R. §§1.821-1.825. The computer readable form of the Substitute Sequence Listing, file "2815-0127P.ST25", is identical to the paper copy, except that it lacks formatting.

Also enclosed herewith is a copy of a transmittal letter with a Preliminary Amendment and Substitute Sequence Listing that was submitted in USPTO on March 3, 2000. The Preliminary Amendment adds Sequence Identifiers to the Amino Acid and Nucleotide Sequences found on pages 12 and 26 of the specification.

In addition to the preliminary amendment, a copy of the date stamped postcard, which accompanied these documents, is enclosed herewith. The stamped postcard proves that the United States Patent and Trademark Office received these items on March 3, 2000.

Summary

If the Examiner has any questions concerning this application, the Examiner is requested to contact Kristi L. Rupert, Ph.D. (Reg. No. 45,702) at (703) 205-8000.

If necessary, the Commissioner is hereby authorized in this, concurrent, and further replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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